

CHAPTER 6

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6. Host country issues

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This chapter explores the political aspects of organizing elections in another country. It addresses issues that pertain to the roles and responsibilities of the countries which host foreign nationals voting in elections of their country of origin, including security, the prevention of fraud, electoral registration, election campaigning, voter information and education, and the costs to the host country of external voting programmes. Finally, it offers some guidelines for institutional arrangements that address these and other issues. However, as the context of each and every external voting programme is different and may require different procedures and processes to be in place, they should be considered as broad guidelines only.

External voting has two main purposes: it is a means of ensuring the realization of political rights for people living outside their country, and it is a means of increasing political participation and thereby building trust and confidence in electoral processes and the democratic governments they produce. Growing cross-border migration has produced populations that are excluded from politics in both their home countries and their countries of residence. If a part of the population is excluded from the electoral process, the resulting system of governance suffers from a lack of legitimacy, accountability and sustainability, particularly in fragile democracies or post-conflict environments.

Despite making a critical contribution to democratization, external voting has not been used extensively—partly because it is perceived as straining financial, security and human resources, but also because of the complexities of negotiating with governments which may be potentially eligible electors, particularly when those electors are refugees or undocumented migrant workers. Conducting external voting presents a number of organizational and political issues, many of which can be addressed by the establishment of certain institutional arrangements in coordination with host countries.

1. Negotiating with host countries

Negotiating with host governments is one of the main challenges in developing external voting systems. Decisions regarding external voting, including the roles and responsibilities of host countries, are often made hastily against tight timetables. Moreover there is little clarity within the international community regarding who has the mandate to advocate, facilitate and evaluate external voting. There are no consistent policies, practices or standards to guide host governments on the question of foreign electoral activities being conducted on their soil, much less the responsibilities of host governments. Processes chosen build on a mix of precedents, relations, and ad hoc opportunities.

Host countries can be selected for external voting on the basis of a number of criteria, including histories of bilateral, regional or international relations. Other criteria can include the availability of resources, the existence of support infrastructures, and anticipated costs. Perhaps the most important would be the estimated numbers of potential voters they host. Countries which have hosted external electors range from those hosting refugees from a neighbouring country or regional conflict, to those hosting members of a diaspora and those hosting foreign workers. They vary in size, culture, language and infrastructure, as well as their level of development, type of government, foreign relations, human rights standards, and degree of democratization.

Despite these differences, host governments often share the same concerns about security, stability and sovereignty. Each of these concerns contributes to resistance to the idea of the political activity of a foreign country occurring on the host country's soil. States generally exhibit greater willingness when there is motivation, such as international advocacy and pressure, support for an identified political cause of the eligible electors they host, or sympathy for a particular religious or ethnic group (Newland 2001). Although these sympathies can sometimes be positive motivators, more often such political 'baggage' hinders the universal realization of the human right to political participation, threatening the consolidation of democracy and ultimately threatening international peace and security.

When external electors are refugee populations, their status, under international protection, mandates the participation of host governments in advocacy, facilitation and decision-making roles. However, the national interests of these governments, particularly in complex regional contexts, often influence their participation and the degree of international support for external voting.

Foreign relations and negotiations are generally outside the responsibilities of electoral commissions, and exceed their capacities. To negotiate external voting agreements with host countries, therefore, countries generally employ their diplomatic missions. In Estonia and Indonesia, for example, the respective ministries of foreign affairs not only negotiate host country agreements but are responsible for the coordination of external voting programmes.

Some governments have refused to allow foreign electoral activity within their borders. Switzerland, for example, did not allow foreigners to vote in foreign elections on its soil until 1989 (see the case study). Governments hosting Liberian (1997, 2005) and Cambodian (1993) refugees did not allow electoral activities, forcing refugees to repatriate in order to exercise their right to political participation and threatening the credibility of the electoral process and the sustainability of peace. In the case of Bosnia and Herzegovina (1996), some European countries refused to allow out-of-country voting on their soil, and in these countries registration and voting were carried out exclusively by post. Of the countries that have not allowed foreign electoral activity on their soil, some have a law that prevents such activity, while others have refused such requests for reasons ranging from sovereignty to security to politics. When a host country does resist foreign electoral activity taking place on its soil, fear of its sovereignty being violated is often the primary concern. Many scholars today are reframing the concept of sovereignty as one that is not territorial but rather based on a moral foundation of rights and obligations to a population that may transcend fixed geographical boundaries (see chapter 3). Such a morally based non-territorial conception of sovereignty suggests that external voting is not a violation of a host country's sovereignty but rather a means of the country of origin fulfilling its obligations as a sovereign to its people through the extension of the rights of political participation to all its citizens, wherever they may reside.

Canada is one of the countries that allow external voting within their borders only by post or inside foreign consulates and embassies. However, in the case of Iraq, given the lack of diplomatic missions, the tight time frame, Canada's overall support for democratization in Iraq and (presumably) considerable international pressure, Canada made a unique exception for the January 2005 Iraq National Assembly election to allow external voting in other locations within the country. However, other Canadian policies, such as a ban on campaigning, remained in full effect.

2. The roles and responsibilities of host countries

The roles and responsibilities of host countries in external voting programmes have ranged widely depending on context, available resources, and the degree of international interest and support. In most cases the duties and responsibilities of countries hosting foreign electoral activity on their soil are minimal, being confined to the role of facilitator rather than that of organizer or implementer. While host countries can assist in the external voting process, their role should not threaten the secrecy of the ballot or the neutrality or transparency of the programme. It is critical that external voting programmes be conducted without political or government influence or interference.

The following are some of the areas where host countries can play a role in external voting programmes:

- providing and protecting data, including demographic information;

- locating suitable office space;
- ensuring freedom of movement (of election staff, monitors and observers, party officials and voters);
- providing customs clearances for election materials, including ballot papers;
- providing permits;
- providing travel documents, including visas;
- waiving any taxes or other fees;
- assisting in the recruitment of staff;
- providing adequate security; and
- facilitating the deployment of election observers, monitors, and political party agents.

Providing data. A primary role of host countries in external voting programmes has been to provide a range of data and information to facilitate the process. Demographic data can help with estimating the numbers of eligible electors and identifying where they are resident within the host country, and can contribute to determining where registration and voting will take place. Data on infrastructure within host countries can also assist an external voting programme.

Data protection. It is essential that any data collected as part of an external voting programme be protected. Ensuring data protection can be a critical component of the overall programme, as the lack of adequate data protection can directly influence turnout. Any information on individuals eligible to participate in the vote that may come into the hands of the host country as a result of the external voting programme should be used exclusively for the external voting programme. These obligations should extend permanently beyond the expiry of any memoranda of understanding (MOUs) or agreements signed by the host country.

Identifying locations. In addition to providing data, host countries can help by making public facilities and similar premises available as registration and polling sites, or with identifying suitable premises for election activities or for temporary office space as needed. However, while host countries can help by providing information, it is important that the country conducting the election make the decisions regarding registration and polling sites. (In the Iraq case (January 2005), the United States emphasized that its role was simply that of a facilitator and that it did not have any authority in deciding on registration and voting sites.) The number and location of registration and polling sites can influence turnout and possibly affect election results, particularly where travel costs are high and are borne by voters themselves.

Freedom of movement. Host countries can help by facilitating and supporting the freedom of movement of election staff, monitors and observers, political party officials and potential voters. Such assistance can include the provision of multiple entry visas or travel permits in a timely fashion. Additionally, host countries can ensure any air, land or sea clearances or permissions necessary for the transport of persons or materials related to the external voting programme. Host countries may also subsidize travel costs or otherwise facilitate voters' travel to register and to vote.

Customs. Host countries can ensure that all necessary customs clearances and permits will be provided for any equipment and materials that may need to be brought into the country in order to conduct the external voting programme. This can include waiving taxes or other fees. However, in the case of the Iraqi external voting programme in Canada, Canada did not recognize the facilitating organization, the International Organization for Migration (IOM), as having any special legal status in Canada, and therefore did not consider the IOM to be eligible for any visa waivers, immunity or duty-free treatment. In fact, Canada specifically held that any imported election material would have to go through the normal customs clearance procedures.

Legality of residency and documentation. In some cases there may be eligible electors who are undocumented or residing illegally in the host country. The legality of one's residency does not affect one's right to political participation: undocumented or illegal residents in host countries have legal citizenship in their countries of origin and the rights and responsibilities that come with that citizenship, including the right to vote. However, the government of the country conducting the election may wish to negotiate with the host country to ensure that participation does not result in deportation or other potentially harmful ramifications for individuals. Such risks could significantly affect levels of participation, and could affect turnout unequally across sectors of a population, thus threatening the legitimacy of the election in the eyes of some citizens.

Points of contact. Host country responsibilities can include the appointment of points of contact in relevant government offices to assist in the processes of issuing visas or permits, customs clearance, providing security, and other matters.

Staff. Recruiting and training staff to run election-related activities in host countries, including electoral registration and polling, can be logistically and financially challenging. While host countries can provide invaluable help by providing data to assist with identifying and locating potential staff, the recruitment, hiring and training of staff should generally be conducted under the direct supervision of the country of origin or its designees.

In the case of the 2004 Afghanistan elections, when external voting was conducted in neighbouring Pakistan and Iran, the IOM, with a mandate from the Afghan Joint Electoral Management Body (JEMB), recruited and trained international and national core staff, community mobilizers, and registration and polling station staff. Overall, thousands of staff were recruited, the majority of them (95 per cent) Afghan nationals, and hiring policies maintained a gender and ethnic balance at all staffing levels. Training was conducted in less than one week. In the case of the 2005 Iraq elections, a number of host countries paid particular attention to staffing issues. Turkey, for example, specified that any locally recruited staff must have clean judicial records. Germany specified that any staff must be subject to local labour laws.

Security. Ensuring security, in terms of both the physical safety and security of participants, staff and materials, and the integrity of the electoral process itself, is of

critical importance. External voting poses unique challenges in both these respects. Cooperation between host countries and the country of origin is essential to ensuring that the external voting programme is conducted in an atmosphere that is free of violence, intimidation or coercion.

While there are no clear standards or best practices in this highly sensitive area, it is generally most convenient and cost-effective for the host country to provide security during the electoral event. Other alternatives could be the use of international peacekeepers (in appropriate situations) or the use of private security companies. One of the most important questions when considering security provisions is whether freedom and security can be guaranteed in external voting programmes to the same degree as within the country of origin.

Agreements with host countries generally include specific security stipulations, particularly regarding registration and voting sites and the transport of election materials. Agreements can specify support from local and national police and security forces and can establish communications structures between the host state and election administrators. Where additional training may be required for the forces providing security, election officials and administrators can make recommendations regarding training and observe the process.

During the external voting programmes in the 2004 Afghanistan and January 2005 Iraq elections, the host countries provided security for registration and polling sites in most cases. They also assisted with providing security for the movement of election materials. For Iraqis voting in the United States, the responsibility (and costs) fell on local law enforcement agencies. The US Government facilitated the provision of adequate security by informing state and local authorities and encouraging them to work with the IOM, which ran the external voting programme. In Germany, the IOM was ultimately responsible for maintaining order at registration and voting sites, while German security and order agencies were responsible for maintaining security outside the locations where registration and voting took place.

Preventing fraud. One of the most serious obstacles to external voting has been the view that it opens additional avenues to fraud which can undermine the entire electoral process. Some observers have argued that the introduction of external voting in countries with a history of electoral fraud can undermine the public's confidence in the process and threaten the consolidation of democracy.

While ensuring the integrity of the electoral process itself and preventing fraud are generally the responsibility of the country holding the election, host countries can help by guaranteeing certain safeguards to protect against fraud. The host country may be able to provide invaluable assistance in this regard, particularly in terms of sharing data.

Electoral registration. The conduct of the electoral registration is a critical component of external voting programmes. The role of host countries in the registration process

is extremely sensitive and highly political, particularly where host countries may have an interest in the outcome of the election or may have ethnic, religious or other ties to the country conducting the election. While host countries may have a role in the registration process, usually through providing demographic data, it is important that protection is put in place to prevent foreign governments from influencing the outcome of an election by screening the registration process and thus ‘engineering’ turnout.

Even where polling does not take place on foreign soil, timetables may make it necessary to conduct electoral registration or other activities out-of-country, particularly where time does not allow full repatriation of refugee communities before registration takes place. In the case of the 1993 Cambodian elections, Cambodian laws prohibited any electoral activity on foreign soil. As a consequence, refugees were forced to return in order to participate in the election. However, the repatriation of Cambodians from Thailand progressed more slowly than had been expected, thus affecting electoral registration timetables and jeopardizing the integrity of the electoral process. In order to register returnees in time, the United Nations and the Thai Government reached an agreement to allow most of the registration process to be conducted in Thailand. However, because Cambodia’s electoral law did not allow for electors to register on foreign soil, electors did not receive registration cards until they reached Cambodia. (For additional discussion, see Gallagher and Schowengerdt October 1997 and 1998: 205.) In this case a combination of in- and out-of-country electoral activity was devised to ensure enfranchisement.

Information dissemination: campaigning, voter information and civic education. Host government cooperation, support and facilitation of the dissemination of information, including campaign materials as well as voter and civic education, is critical to the success of any external voting programme. In the Eritrean referendum of 1991, for example, Sudan’s cooperation and initiative were essential to the education of voters in refugee camps.

Host governments can help in information campaigns of all types by making available local and national forms of electronic and print media, including television and radio, for the purposes of the electoral process. When external voting is being conducted in refugee camps, voter information and education should be tied to existing communication systems, particularly those linked to refugee priorities such as food and shelter.

External voting also poses questions about whether external electors will have less, equal or greater access to information than their counterparts in the country of origin. For example, Bosnian refugees in 1996 had access to the international press and other sources of information, while electors within Bosnia and Herzegovina had access to more limited media. Administrators of external voting programmes must consider whether differences in access to information might influence the overall integrity of the process or the outcome of the election. These differences become particularly important where one group of electors is limited by its access to government-controlled or otherwise unbalanced media.

The campaign period can be critical to an electoral process, providing potential voters with essential information about the choices before them. Where campaigning is allowed, host governments can help by authorizing candidates to campaign within the guidelines of any codes of conduct that may exist. While most countries do permit voter and civic education activities, it is not uncommon for a country to prohibit foreign nationals from campaigning on its soil. In the January 2005 Iraq elections, neither Turkey nor Canada allowed foreign political parties to conduct election campaigns on their soil.

Campaigning aside, the distribution of general political information is highly sensitive. In the case of the 1997 Liberian elections, not only did host governments resist external voting on their soil, but they also banned the dissemination of election-related information within their borders. For Bosnian electors in Croatia, the 1997 MOU between Croatia and the Refugee Elections Steering Group (RESG), an ad hoc organization tasked with coordinating Bosnia's out-of-country voting, prevented Bosnian political parties from campaigning on Croatian soil and limited the types of voter and civic educational materials that could be distributed to small brochures in the Croatian and Serbian languages 'in order not to provoke other nationalities' (Gallagher and Schowengerdt 1998: 202).

3. Host country agreements

The actors who help in the conduct of out-of-country voting programmes and the parties that sign formal agreements with the country conducting the election vary. Agreements can be signed with host governments, UN missions, local non-governmental organizations (NGOs) or third parties.

When external voting is taking place in multiple countries, host country agreements often vary from country to country. A certain level of standardization between agreements is critical to ensuring the transparency and integrity of the electoral process, particularly regarding sensitive issues such as elector eligibility and registration. However, when an election is conducted in multiple countries which are at varying levels of development, some procedural and logistical differences may be unavoidable.

Examples of host country agreements include those signed in connection with the 2004 presidential election in Afghanistan—the largest external voting programme to date in terms of numbers of registered electors and external turnout. The government of Afghanistan and the UN Assistance Mission in Afghanistan (UNAMA) signed two MOUs with the governments of Iran and Pakistan, respectively. These MOUs stipulated that the two host governments would provide widespread support for the external voting programme, including security for registration and polling centres, escorts for the transport of election material, and support for civic education and public information campaigns.

3.1. The role of third parties

Often, external voting can be arranged through agreements directly between the host country and the electoral management body that is conducting the election. However, in cases where the country of origin may only have a few democratic elections under its belt or may not have sufficient infrastructure, third parties can be contracted to help in implementing the external voting programme. The IOM has played this role in Bosnia and Herzegovina, East Timor, Kosovo and, most recently, Afghanistan and Iraq. Where a third party is involved, the agreement with the host country must provide for this participation. In addition to serving where there may be a gap in infrastructure, particularly when an election timetable is short, third parties can also be an important safeguard against any possible political or governmental influence from any host country. It is imperative that third parties serve as implementers only and ensure that all questions of a political nature are left to the appropriate governments. The use of third parties can add significantly to the costs of external voting programmes.

3.2. General guidelines for host country agreements

When negotiating host agreements to facilitate external voting programmes, there are a number of important criteria that must be recognized and protected.

First and foremost, all parties must ensure the secrecy, neutrality and transparency of the external voting programme, without local political or governmental influence or interference. Host country agreements must also protect the integrity of the constitution and electoral laws of the country holding the election. External voting programmes should be designed to mirror the administrative activities of the country of origin as closely as possible.

In addition, host country agreements should ensure that participation in external voting in no way affects the political, social or economic inclusion of participating persons within their country of residence. Some host country agreements from the January 2005 Iraqi elections state clearly that the eligibility of an individual living outside Iraq to vote, or the exercise of this right, in no way affected the individual's legal status in the host country.

As is mentioned above, it may also be necessary for some components of a host country agreement, particularly those that protect any data collected during the process, to remain in force after the expiry of any agreement or MOU. Such a clause would be particularly appropriate to protect against the sharing of any information gathered during the external voting programme for purposes other than facilitating the vote.

Where external electors are refugees, agreements can also ensure that electoral participation does not become a means of forced or premature repatriation of these populations before conditions to support their return are in place. Agreements can specify that the external voting programme will neither prevent nor delay the voluntary repatriation of

refugees living in the host country. A number of MOUs between the IOM and countries hosting Iraqi refugees included language along these lines to ensure that the principle of non-refoulement—the principle enshrined in the 1951 Convention Relating to the Status of Refugees that no state shall expel or return a refugee to a territory where his or her life or freedom would be threatened on account of race, religion, nationality or political opinion—was respected. In contrast, in the case of Bosnia and Herzegovina, where external voting was largely by post, the Dayton Agreement stipulated refugee repatriation during the electoral period by stating that ‘the exercise of a refugee’s right to vote shall be interpreted as confirmation of his or her intention to return to Bosnia and Herzegovina. By election day, the return of refugees should already be under way, thus allowing many to participate in person’. When an electoral process defines the end of a peace agreement (and an end to corresponding humanitarian and refugee assistance programmes), there is a risk that obliging refugees to return to their country of origin in order to vote will violate the principle of non-refoulement.

3.3. External voting in consulates, in embassies or by post

Some host countries, such as Canada and some European countries, only allow external voting in embassies or consulates, or by post. When external voting takes place at a country’s consulates or embassies, agreements with host countries are often not necessary. Similarly, when external polling is to take place by postal registration and voting, the need for agreements with host countries is less pressing. However, agreements can still be essential in ensuring critical host country support.

In the case of the 1996 Bosnia and Herzegovina elections, registration for external voting was carried out almost exclusively by post, and voting took place through a combination of postal and in-person polling, depending on the number of refugees within each host country. Coordination offices were set up in 17 countries and served to disseminate information and facilitate registration and voting. These offices were established through a series of MOUs between the RESG and the major host governments. The nature of these agreements and the roles and responsibilities of each host country varied considerably. In the United Kingdom, refugee agencies were used to disseminate information. In the United States, an NGO, the League of Women Voters Education Fund, was used (Gallagher and Schowengerdt 1998: 206–7). In Germany, the government funded and administered an office that facilitated the registration and voting processes.

4. Costs

Past external voting programmes, particularly those in post-conflict contexts, have been funded through widely differing mechanisms. Chapter 5 discusses the general aspects of the cost of external voting, but these present particular problems where host countries are concerned. Many consider it important that the costs borne by host countries be kept to a minimum, for a number of reasons. First, minimizing the costs borne by host

countries will contribute to ensuring that cost is not a factor in host countries' decisions on whether or not to allow foreigners to vote on their soil. Second, it will help to protect the electoral process itself from any potential interference by others who may have a stake in the outcome of the election.

Generally, countries that have a longer history of democratic elections and have a more established electoral process tend to fund external voting programmes themselves. In the cases of post-conflict societies, costs tend to be shouldered by the international community, either through direct assistance to the electoral commission or government conducting the election or by other means. For external voting in Bosnian elections, for example, host countries have both funded and administered electoral activities. For these elections in the United States, the US Department of State made a grant to the League of Women Voters Education Fund to facilitate absentee voting.

The majority of costs are borne by the country of origin or the international community. An important exception is that host countries typically assume the costs of providing security for the registration and polling activities. A second cost typically borne by host countries is the provision or loan of certain election materials, such as ballot boxes, for use in the election. External voting programmes can increase their appeal to host countries when implementing partners agree to purchase any materials and equipment from domestic markets wherever possible. This was a component of Syria's MOU with the IOM during the 2005 Iraq National Assembly elections.

For the January 2005 Iraqi elections, some host countries provided security at their own expense, while others did so only with the financial support of the IOM. For example, Turkey's MOU with the IOM for the Iraqi external voting programme stated that the government of Turkey would provide appropriate places for the establishment of election centres, but the costs of these locations would be borne by the IOM. It also specified that the IOM would pay in advance a specified amount per election centre for security (65,000 US dollars (USD)) and issue an additional advance for the transport of election materials (10,000 USD).

Where external electors are refugees under international protection, international law does provide some guidance regarding the costs of refugee assistance. It embodies a principle of 'equal burden-sharing', recognizing that all states have a duty to provide assistance to refugees. This principle is designed to prevent the 'burden' of refugees from falling disproportionately on states neighbouring a conflict, which could possibly cause them to close their borders. The principle of equal burden-sharing is also designed to prevent refugees from becoming a source of tension between states. (The use of the word 'burden-sharing' is unfortunate as there is a growing literature that explores essential contributions of refugees to their host countries, but the basic principle of the international community sharing responsibilities to minimize tension is an important one. See Bouchet-Saulnier 2002: 338–9.)

In the view of the present author, these costs of refugee assistance should be considered to

include the facilitation of political participation. The application of this principle would prevent the costs of enfranchisement from falling disproportionately on less developed nations which tend to be those that host large populations of refugees who are potential external voters. The application of equal burden-sharing within the international community would prevent cost from being a source of disenfranchisement, contributing to greater overall political participation, and would remove a heavy financial burden on some less developed states.

5. Conclusions

Host country issues are challenging, complex and close charged. To complicate matters, external voting programmes are often conducted hastily to tight timetables. There is little clarity regarding who has the mandate to advocate, facilitate and evaluate external voting. There are no consistent policies, practices or standards guiding host governments' positions and responsibilities. Differences in political culture, administrative structure, infrastructure, and legal framework must be taken into consideration. However, there are a few components of external voting programmes that have begun to standardize.

- Any information on individuals that may come into the hands of the host country as a result of the external voting programme should be used exclusively for the external voting programme.
- The legality of an individual's residency, including a lack of documentation, does not affect an individual's eligibility to exercise his or her right to political participation.
- Participation in an external voting programme should not affect the political, economic or social inclusion of individuals within their host country in any way.
- While host countries may have a role in the registration process, usually through providing demographic data, it is important that protections are put in place to prevent foreign governments from influencing the electoral outcome through an engineered turnout by screening the registration process.
- It is critical that host countries facilitate and support the dissemination of information, including voter and civic education as well as political campaigns.
- Participation in an external voting programme should neither prevent nor delay the voluntary repatriation of refugees living in the host country.
- The political, financial and logistical obstacles to external voting programmes should be approached with the intention of overcoming them. The costs of not conducting external voting may, in the long run, be much greater.

